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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/783,892	02/14/2001	David J. Howe	3237	3400

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EXAMINER

MACKEY, JAMES P

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 07/03/2002

3

Please find below and/or attached an Office communication concerning this application or proceeding.

OF 3

Office Action Summary

Application No.
09/783,892

Applicant(s)
HOWE ET AL.

Examiner
James Mackey

Art Unit
1722



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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1. Claim 8 is objected to because of the following informalities: on line 2, "as assembly" should be --an assembly--. Appropriate correction is required.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 6, "extending sidewardly" is unclear and indefinite as to exactly where the trailing edge extends ("sidewardly" relative to what?); it is suggested that the claim recite that the edge extends **outwardly** from the channel, for clarity.

In claim 7, lines 5 and 7, "the channel" should be --the channel portion-- to agree with the recitation at line 3 of the claim.

In claim 8, line 5, "said apparatus rotating the scoop" is unclear as to whether this is the "apparatus" of the claim preamble or the "apparatus for moving the scoop" of line 4 (it is suggested that either --means-- or --device-- be used instead of "apparatus" in the body of the claim); moreover, the "means for rotating the scoop" of line 8 is unclear and indefinite as to exactly how this relates to and cooperates with the "apparatus for rotating the scoop" of lines 4-5 (are these one and the same "means"?).

In claim 9, lines 4, 5 and 8, "the channel" should be --the channel portion-- to agree with the recitation at line 3 of the claim; line 9, "the scoop" (both occurrences) should be --the scoop

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member-- to agree with the recitation at line 2 of the claim; and lines 9-10, "as the scoop is rotated relative to the container" is not correct, since the claim recites means for **rotating the container** relative to the scoop member.

Regarding claim 10, line 1, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention; also, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Further in claim 10, lines 8, 10 and 13, "the scoop" should be --the scoop assembly-- to agree with the recitation at line 5 of the claim.

In claim 11, line 1, "the scoop" should be --the scoop assembly--; and lines 1-2, "the means for moving the scoop relative to the container" does not agree with the means recited in claim 10 (the phrase should read --the means for producing relative movement between the scoop assembly and the container--).

In claim 12, lines 2 and 4, "the scoop" should be --the scoop assembly--.

In claim 13, lines 1 and 3, "the scoop" should be --the scoop assembly--; line 2, "an opening" should be --said opening--; and line 3, "when the scoop moves" does not agree with the structure recited in claim 10 (i.e., the means for producing relative movement).

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Whiteside (U.S. Patent 1,638,134).


Whiteside clearly teaches an apparatus including a scoop member mounted adjacent the open end of a container, the scoop member including a curved, tapered channel having a semi-circular cross-section, the channel including an extending trailing edge 20 along one side of the channel, with an opening in the scoop member adjacent the channel end having the largest cross-sectional area, means for providing relative rotation between the scoop member and the container, and a device 23 associated with the scoop member for dispensing the product.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Mackey whose telephone number is (703) 308-1195. The examiner can normally be reached on Monday-Friday from 8:30AM to 6:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jan Silbaugh, can be reached at (703) 308-3829. The fax phone number for this Group is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651. Any inquiry relating to the contents or papers filed in this application, other than issues of substance requiring the attention of the Examiner, should be directed to the Customer Service Office, Technology Center 1700, whose telephone number is (703) 306-5665.

MACKEY/jpm
June 30, 2002


JAMES MACKEY
PRIMARY EXAMINER
ART UNIT 1722
6/30/02